



# **COMMONWEALTH of VIRGINIA**

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
CRAIG – NEW CASTLE PUBLIC SERVICE AUTHORITY  
FOR UNPERMITTED DISCHARGES  
FROM  
PUMP STATION #4  
VPDES Permit No. VA0064599**

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Craig – New Castle Public Service Authority, regarding the wastewater treatment plant and Pump Station #4, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

## **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “BRRO” means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” means Pump Station #4 located in New Castle, Virginia, which is a component of the sanitary sewer collection system owned by the PSA.
11. “Infiltration” means the water entering the Sewer System and service connections from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguishable from, Inflow.
12. “Inflow” means the water discharged into the Sewer System, including service connections, from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm sewers, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguishable from, Infiltration.
13. “I&I” means the total quantity of water from both Infiltration and Inflow without distinguishing the source.
14. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

15. "O&M" means operations and maintenance.
16. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
17. "Permit" means VPDES Permit No. VA0064599, which was issued under the State Water Control Law and the Regulation to the PSA on March 1, 2014 and reissued on March 1, 2019 and which expires on February 29, 2024.
18. "Plant" means the PSA's Wastewater Treatment Plant (WWTP) located in New Castle, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses served by the PSA.
19. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
20. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
21. "PSA" means the Craig-New Castle Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Craig-New Castle Public Service Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
22. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
23. "Sewage collection system" means a collection system consisting of pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of waste streams to a treatment works.

24. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
25. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
26. “Va. Code” means the Code of Virginia (1950), as amended.
27. “VAC” means the Virginia Administrative Code.
28. “VPDES” means Virginia Pollutant Discharge Elimination System.
29. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The PSA owns and operates the Plant and sewage collection system in New Castle and Craig County, Virginia. The Facility, located in New Castle, Virginia is a component of the sewage collection system.
2. Johns Creek, a tributary of Craig Creek is located in the James River Basin. Johns Creek is listed in the Department’s 305(b) Report as impaired for *Escherichia coli*. The sources of the impairment are listed as livestock (grazing or feeding operations), wet weather discharges (non-point source), municipal (urbanized high density area), wildlife other than waterfowl, unspecified domestic waste and wastes from pets.
3. Department records indicate that the PSA reported the following unauthorized discharges to state waters from its sewerage collection system:
  - a. An overflow of approximately 246,000 gallons of wastewater to Johns Creek from Pump Station #4 on December 14, 2018 due to heavy rains and saturated ground.
  - b. An overflow of approximately 378,000 gallons of wastewater to Johns Creek from Pump Station #4 on December 20, 2018 due to heavy rains and saturated ground.
  - c. An overflow of approximately 141,000 gallons of wastewater to Johns Creek from Pump Station #4 on December 28, 2018 due to I & I of rain and ground water and saturated ground.
  - d. An overflow of approximately 162,000 gallons of wastewater to Johns Creek from Pump Station #4 on January 24, 2019 due to I & I of rain and ground water and saturated ground.
  - e. An overflow of approximately 1,260,000 gallons of wastewater to Johns Creek from Pump Station #4 on February 20, 2019 due to I & I of rain and ground water and saturated ground.
  - f. An overflow of approximately 294,000 gallons of wastewater to Johns Creek from Pump Station #4 on June 19, 2019 due to I & I of rain and ground water and saturated ground.

- g. An overflow of approximately 126,000 gallons of wastewater to Johns Creek from Pump Station #4 on October 31, 2019 due to I & I of rain and ground water and saturated ground.
4. The Department issued NOVs on March 27, 2019, April 22, 2019, May 16, 2019, and June 19, 2019 to the PSA, for the unauthorized discharges to state waters from its sewerage collection system.
5. In submitting its March 2019 DMR to the Department, the PSA reported a violation of its BOD5 effluent limits for Quantity Average and Maximum for March 2019.
6. Part I.A of the Permit establishes effluent limits for Parameter 003, BOD5.
7. The Department issued NOV No. W2019-05-B-008 to the PSA on May 30, 2019 for the March 2019 DMR violations.
8. On July 9, 2019, the PSA submitted a Corrective Action Plan (“CAP”) to address the unauthorized discharges to state waters from its sewerage collection system with a proposed completion date of December 1, 2019.
9. On December 3, 2019, the PSA provided an update to the CAP. One major project of the CAP had been completed but staff issues, time, and money all limited the PSA’s ability to complete the CAP.
10. In submitting its November 2019 and December 2019 DMRs to the Department, the PSA reported a violation of Parameter 164 Flow, Influent.
11. Part I.A of the Permit establishes a limit for Parameter 164, Flow, Influent.
12. Johns Creek is a surface waters located wholly within the Commonwealth and is a “state waters” under State Water Control Law.
13. The Department has issued no permits or certificates to the PSA other than VPDES Permit No. VA0064599.
14. Va. Code § 62.1-44.5(A)(1) states that: “Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
15. The Regulation, at 9 VAC 25-31-50 (A) and Part II.F of Permit, also state that except in compliance with a VPDES permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
17. The Department has issued no permits or certificates to the PSA other than the Permit.

18. Based on the reports and DMRs submitted by the PSA and a review of DEQ files, the Board concludes that the PSA has violated the Permit and Va. Code Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3), C(5), and C(7), above.
19. In order for the PSA to return to compliance, DEQ staff and representatives of the PSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15, the Board orders the PSA, and the PSA agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the PSA for good cause shown by the PSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The PSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The PSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the PSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
  7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
  8. The PSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
    - a. the reasons for the delay or noncompliance;
    - b. the projected duration of any such delay or noncompliance;
    - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
    - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.
- Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
  10. This Order shall become effective upon execution by both the Director or his designee and the PSA. Nevertheless, the PSA agrees to be bound by any compliance date which precedes the effective date of this Order.
  11. This Order shall continue in effect until:
    - a. The Director or his designee terminates the Order after the PSA has completed all of the requirements of the Order;

Consent Order

Craig – New Castle Public Service Authority; VPDES Permit No. VA0064599

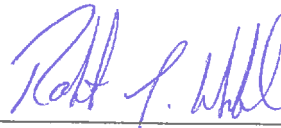
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- b. The PSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the PSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the PSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

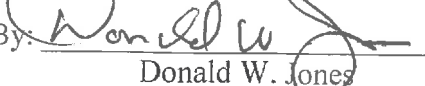
- 12. Any plans, reports, schedules or specifications attached hereto or submitted by the PSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of the PSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the PSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the PSA.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, the PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of April, 2020.



Robert J. Weld, Regional Director  
Department of Environmental Quality

The Craig – New Castle Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 03-09-2020 By: , Administrator  
Donald W. Jones



Commonwealth of Virginia

City/County of CRAIG

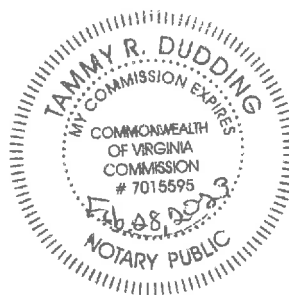
The foregoing document was signed and acknowledged before me this 9 day of March, 2020, by Donald W. Jones who is the Administrator of the PSA, on behalf of the PSA.

[Signature]  
Notary Public

7015595  
Registration No.

My commission expires: Feb. 28, 2023

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

The PSA shall:

1. Complete an I&I study of the PSA's Sewer System by July 1, 2020 and submit the results to the Department for verification by August 10, 2020. The I&I study shall include, at minimum, the following:
  - a. Assembly of a sewerage transmission system configuration map with pipe sizing, pump stations, manhole locations, and graphic reference points noted;
  - b. Transmission line integrity testing (segment smoke testing) for the entire Sewer System;
  - c. Evaluation of security and leakage for all pump stations, manhole covers, and other sewer transmission lines;
  - d. Analysis and project report.
2. Based on the I&I study, identify and prioritize I&I projects, which will prevent future non-compliance with the PSA's Permit requirements and submit the list of prioritized projects to the Department for review and approval by October 1, 2020.
3. Develop a schedule and financial plan ("PSA's Plan of Action") to complete the projects, identified in item 2 of this Appendix. Submit the PSA's Plan of Action to the Department for review and approval by January 10, 2021. After the Department approves the PSA's Plan of Action it shall be incorporated by reference and become an enforceable part of this Order.
4. Unless otherwise specified in this Order, the PSA shall submit all requirements of Appendix A of this Amendment to:

Jerry Ford, Jr.  
VA DEQ - Blue Ridge Regional Office  
3019 Peters Creek Road  
Roanoke, VA 24019  
Phone: (540) 562-6817  
e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)